



WASHINGTON, DC

STEPHEN E. CORAN
202.416.6744
SCORAN@LERMANSENDER.COM

October 9, 2014

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: GN Docket No. 14-28
WC Docket No. 10-90
GN Docket No. 12-354
ET Docket No. 13-49
WT Docket Nos. 13-238 and 13-32; WC Docket No. 11-59
Notice of Oral Ex Parte Presentation

Dear Ms. Dortch:

On October 8, 2014, Alex Phillips, Vice President and FCC Committee Chair of the Wireless Internet Service Providers Association ("WISPA"), and undersigned counsel to WISPA, met with Gigi Sohn, Renee Gregory, Daniel Alvarez and Phil Verveer of Chairman Tom Wheeler's office.¹ The attached presentation was distributed and discussed at the meeting.

The purpose of the meeting was to discuss the small business aspects of the above-referenced proceedings. The WISPA representatives emphasized the need for greater consideration of the effects that its rules would have on small businesses that provide broadband service to small communities and rural areas of the country. In particular, WISPA representatives pointed to the need for the Commission to consider "significant alternatives" to proposed rules that "would minimize the economic impact" on small businesses, consistent with the Regulatory Flexibility Act.²

Regarding the above-referenced proceedings, the meeting participants discussed the points stated in the attached presentation. The WISPA representatives explained that, in the open Internet proceeding (GN Docket No. 14-28), certain proposed rules would increase costs and burdens for privately funded small businesses. Regarding the Connect America Fund proceeding (WC Docket No. 10-90), the WISPA representatives stated that, if the Commission adopted its proposal to increase the minimum broadband speed to 10 Mbps, it should not change the speed threshold of 4 Mbps downstream/1 Mbps upstream for existing broadband providers, a result that

¹ Ms. Gregory was not in the meeting room during the discussion on the Connect America Fund.

² 5 U.S.C. §§ 601 *et seq.*

would inappropriately enable CAF support to be used to overbuild privately funded broadband systems.

The WISPA representatives specifically requested that, in the wireless facilities proceeding (WT Docket Nos. 13-238 and 13-32; WC Docket No. 11-59), the Commission should adopt a 45-day period for approval of eligible facilities requests, after which the application would be deemed granted. This process would accelerate approvals and broadband deployment, and add certainty to the approval process. WISPA also supported the revised proposal contained in PCIA's September 18, 2014 ex parte letter on the definition of "substantially change the physical dimensions," with one important exception – that grain silos be deemed "non-buildings" along the lines of water tanks and electrical transmission facilities because they do not house persons in the way that buildings do.

The WISPA representatives also stated that proposed rules for additional spectrum in the 3550-3650 MHz band (GN Docket No. 12-354) could benefit small broadband providers by expediting collocation of wireless equipment and by making additional spectrum available. The attendees also discussed grandfathering of existing WISPs and utilities that rely on the 3650-3700 MHz band.

With respect to the petitions for reconsideration of the out-of-band emission limits adopted for the 5725-5850 MHz band in the 5 GHz proceeding (ET Docket No. 13-49), the WISPA representatives reported that, in response to a suggestion from the Office of Engineering and Technology, industry was considering alternatives to the new out-of-band emission requirements that would be less burdensome for industry, but that would also address governmental concerns about potential harmful interference from out-of-band emissions.

Pursuant to Section 1.1206 of the Commission's Rules, this letter is being filed electronically via the Electronic Comment Filing System in the above-captioned proceeding.

Respectfully submitted,



Stephen E. Coran
*Counsel to the Wireless Internet Service
Providers Association*

Attachment

cc: Gigi Sohn
Renee Gregory
Daniel Alvarez
Phil Verveer

The FCC and Small Broadband Providers: Doing More so WISPs Can do More

October 8, 2014

www.wispa.org



About WISPA

- Founded in 2004 by a small group of WISPs
- Today
 - 800 members . . . and growing
 - More than 3,000,000 WISOP customers
- Typically . . .
 - Use unlicensed spectrum in 900 MHz, 2.4 GHz and 5 GHz band and 3.65 GHz band for last mile and backhaul
 - Many based in rural communities and small towns with little or no choice of broadband provider
 - Community and customer focused
 - A few hundred to several thousand customers per WISP
- All but two members are small businesses under any definition

About WISPs and Small Broadband Providers

- 60 million households have access to WISP broadband service
 - 46.5% of population
- 3 million households can get broadband **only** from a WISP
 - 16.7% of land area
- Estimated majority of broadband providers are small businesses
 - But 17 broadband providers serve 93% of U.S. retail broadband subscribers
 - And, as the FCC has indicated, the rural digital divide continues to widen...

Overview

- Regulatory Flexibility Act
- Open Internet
- Connect America Fund
- 3650-3700 MHz Band
- 5.8 GHz Band Petitions for Reconsideration
- Wireless Infrastructure

Regulatory Flexibility Act

- FCC typically does a poor job of meeting Regulatory Flexibility Act obligations requiring analysis of “significant alternatives” to “minimize economic impact” on small businesses
 - FCC has never conducted inventory of unlicensed spectrum use and has never collected data on the WISP industry
 - Case in point: Open Internet proceeding
 - IRFA ignored WISPs altogether
 - NPRM failed to ask for comment on reduced burdens, exemptions, phased compliance, etc., and failed to provide adequate notice to public
 - WISPA and NCTA filed separate IRFA Comments
 - WISPA asked FCC to issue a supplemental IRFA

Open Internet

- Proposed rules will have a significant adverse effect on small businesses
 - Small businesses should be **exempt** from new requirements
 - No record of bad behavior
 - New disclosure requirements will increase actual costs for monitoring equipment, attorneys, and ongoing compliance
 - New rules will increase compliance risk
 - New rules will chill investment in broadband deployment
 - New rules will chill entry by small, minority and women-owned businesses
 - New rules will increase costs for rural and small-town consumers least able to afford the pass-throughs

Open Internet

- Rules must account for ability of large edge and broadband providers to exercise leverage over small broadband providers
 - May be financial incentive for large edge provider to block, degrade or overcharge for content delivered to small provider
 - May create incentive for large broadband providers to poach customers from small broadband customers to competitor
- Enforcement rules must account for small businesses
 - No formal complaints
 - Mandatory 30-day negotiation period **before** complaint can be filed
 - Specific remedies should be adopted to allow risk to be quantified
 - Enforcement under Title II should be rejected because it permits damages that could destroy small businesses

Connect America Fund

- Most WISPs are not eligible for USF support
- WISPs are increasingly offering interconnected VoIP
- WISPs are participating in the CAF process
 - CAF Phase I and Phase II challenges
 - Rural Broadband Experiment applications
 - CAF Phase II competitive bidding
- FCC should **not** adopt a 10 Mbps minimum speed threshold
 - Rules should focus first on ensuring 4/1 Mbps speeds to **all** Americans
 - Increasing the speed threshold would make areas eligible for public funding that are currently served with 4/1 Mbps broadband from privately funded providers, many of which are small businesses
- FCC should streamline ETC designation process to enable meaningful participation by more bidders, including small businesses

3650-3700 MHz Band

- WISPA supports the three-tiered Spectrum Access System for the 3550-3650 MHz band with certain conditions
 - Higher power in rural areas
 - Robust and dynamic SAS that promotes spectral efficiency
 - Reasonable restrictions on PAL spectrum and license duration
 - 50% GAA set-aside with opportunistic use
- WISPA also supports inclusion of 3650-3700 MHz band with certain conditions to protect the current investment of small broadband providers, utilities and other incumbents
 - Permanent grandfathering so long as licensee provides service contours and frequencies for static inclusion in SAS
 - First right for grandfathered licensees to file for PALs
 - No reduction in power for grandfathered operations

5.8 GHz Petitions for Reconsideration

- WISPA, JAB Broadband, Cambium and Mimosa Networks all filed for reconsideration of the FCC's adoption of more restrictive out-of-band emissions for the 5725-5850 MHz band
 - Band is the workhorse for WISPs, utilities and others that rely on band for long-distance point-to-point and point-to-multipoint broadband connections
 - Will require installation of equipment that will . . .
 - Cost more than twice as much if filtering is used, with substantially less use of spectrum (120 MHz to 45 MHz), or
 - Require substantial power/gain reduction that will require additional infrastructure to replicate link or service area

5.8 GHz Petitions for Reconsideration

- Changing OOB will not solve alleged interference concerns
 - TDWR interference is from *illegally modified* equipment, not compliant certified equipment
 - FCC adopted new testing, DFS and software security requirements to eliminate the possibility of illegally modifying equipment
- Huge outpouring of support in record from diverse parties, with only one objection
- Granting reconsideration will ...
 - allow small broadband providers to continue to serve small businesses and rural communities that have few broadband access options
 - avoid disruption to delivery of electric, gas and water utilities

Wireless Infrastructure

- FCC should proceed to adopt rules that broadly interpret Section 6409(a) of the Spectrum Act
 - Should support collocation on any existing structure that supports communications equipment, ***even if it was not build for the sole or primary purpose of providing such support***
 - Water tanks, grain legs, utility poles are critical vertical infrastructure in rural areas where many small broadband providers operate
 - Simple application procedures to determine if a “substantial change” in physical dimensions is proposed
 - 45-day shot clock for local collocation approval, with no unreasonable conditions
 - Streamlined environmental and historic preservation review

Final Thought

“Small businesses are a key driver of job creation and economic growth, and they are the foundation of local economies across America – from Missouri’s countryside to the neighborhoods of Manhattan.”

- *Chairman Tom Wheeler, Testimony before the House Committee on Small Businesses, September 17, 2014*